

015

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOHN DOE #1, a minor by his parent and natural guardian PARENT #1; JOHN DOE #2, a minor by his parent and natural guardian PARENT #2; JOHN DOE #3, a minor by his parent and natural guardian PARENT #3; JANE DOE #4, a minor by her parent and natural guardian PARENT #4; JANE DOE #5, a minor by her legal guardian GRANDPARENT #5; JANE DOE #6 a minor by her legal guardian GRANDPARENT #5; JOHN DOE #7, a minor by his parent and natural guardian PARENT #7; JANE DOE #8, a minor by her parent and natural guardian PARENT #8; JOHN DOE #9, a minor by his parents and natural guardians PARENT #9A and PARENT #9B; JANE DOE #10, a minor by her parent and natural guardian PARENT #10; JANE DOE #11, a minor by her parent and natural guardian PARENT #11; JANE DOE #12, a minor by her parent and natural guardian PARENT #12; JOHN DOE #13, a minor by his parent and natural guardian PARENT #13; JANE DOE #14, a minor by her parent and natural guardian PARENT #14; JANE DOE #15, a minor by her parent and natural guardian PARENT #15; JOHN DOE #16, a minor by his parent and natural guardian PARENT #16; JOHN DOE #17, a minor by his parents and natural guardians PARENT #17A and PARENT #17B; JOHN DOE #18, a minor by his parents and natural guardians PARENT #18A and PARENT #18B; JOHN DOE #19, a minor by his parent and natural guardian PARENT #19; JANE DOE #20, a minor by her parent and natural guardian PARENT #20; JOHN DOE #21, a minor by his parent and natural guardian PARENT #21; JOHN DOE #22, a minor by his parent and natural guardian PARENT #22; and JOHN DOE #23, a minor by his parent and natural guardian PARENT #23, on behalf of all persons similarly situated,

Plaintiffs,

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant.

**STIPULATION AND ORDER
OF SETTLEMENT OF
ATTORNEYS' FEES AND
COSTS**

16-CV-1684 (NGG)(RLM)

WHEREAS by Memorandum and Order entered July 31, 2018 (hereafter "the Memorandum and Order"), the Court granted final approval to Plaintiffs' Motion for Final

Approval of the Settlement Agreement and approved the amended proposed settlement (hereinafter "the Stipulation and Order of Settlement ;") and

WHEREAS paragraph 84 of the Stipulation and Order of Settlement provides that Defendant New York City Department of Education agrees that Plaintiffs are entitled to reasonable attorneys' fees and costs as though they are prevailing parties under applicable law, and that Plaintiffs' counsel shall submit a request to Defendant's counsel for reimbursement of fees and costs no later than thirty days after the Effective Date; and

WHEREAS the Court found, in its Memorandum and Order, that it is reasonable that Plaintiffs would receive fees as though they are the prevailing parties under applicable law; and

WHEREAS the Effective Date is defined, in relevant part, in paragraph 9 of the Stipulation and Order of Settlement as the earliest date after which all of the following events have occurred: notice to the Settlement class has been issued; the Fairness Hearing has been held; the court has granted approval of the Stipulation and Order of Settlement; the Court has entered the order and judgment and the time to appeal such order and judgment has expired in the absence of any appeal filed; and

WHEREAS no appeal was filed and accordingly the Effective Date is August 31, 2018; and

WHEREAS Plaintiffs are John Doe # 1 through John Doe # 23, as well as all members of the Settlement class certified by the Court in its Memorandum and Order; and

WHEREAS Plaintiffs and Defendant New York City Department of Education (together, the "Parties") now desire to resolve the issues of all attorneys' fees and related costs and expenses arising out of this action through the Effective Date, August 31, 2018, without further proceedings, on terms and conditions that are just and fair to the Parties;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Parties, through the undersigned, as follows:

1. In consideration of the monies to be paid as per paragraph "2" below, all claims for attorneys' fees, related costs and expenses in this action through August 31, 2018, are dismissed with prejudice, and without fees, costs, or expenses in excess of the amount specified in paragraph "2".

2. The City of New York shall pay SIX HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$ 600,000.00) in full satisfaction of all claims for attorneys' fees, costs and expenses, incurred or accrued in this action through August 31, 2018.

3. Payment of the amount specified in paragraph "2" will be made by check payable to "Walden Macht & Haran LLP" and mailed to Plaintiffs' attorneys at Walden Macht & Haran LLP, One Battery Park Place, 34th Floor, New York, N.Y. 10004.

4. In consideration of the payment of the amount specified in paragraph "2", Plaintiffs and Walden Macht & Haran LLP (hereinafter "WMH") agree to the dismissal of all claims against Defendant New York City Department of Education for attorneys' fees, related costs and expenses in this action through August 31, 2018, and to release and discharge Defendant New York City Department of Education and the City of New York, their successors and assigns, and all past and present officials, employees, departments, agencies, representatives, directors, and agents of the City of New York and the New York City Department of Education from any and all liability, claims, and/or rights of action for attorneys' fees, costs and expenses incurred or accrued in connection with this action through August 31, 2018.

5. Following execution of this Stipulation and Order of Settlement of Attorneys' Fees and Costs (hereinafter "Stipulation and Order re: Fees"), WMH shall: execute a Release based

upon the terms of paragraphs "2" and "4" above; complete a substitute W-9 form; and promptly provide this Release and substitute W-9 form to Defendant's undersigned counsel.

6. Payment of the amount specified in paragraph "2" is conditioned upon delivery of all documents reasonably necessary to effectuate this Stipulation and Order re: Fees described in paragraph "5".

7. WMH represents that no attorney outside of WMH assisted WMH in prosecuting this action on behalf of WMH clients or class members. Thus, WMH further represents that no lawyer or law firm would have an enforceable claim to recovery of any attorneys' fees, costs, or expenses in connection with the prosecution of this action. Despite the foregoing, should any lawyer or law firm obtain a judgment for legal fees, costs or expenses for legal work prosecuting this action before and including August 31, 2018 against Defendant or the City of New York, WMH agrees to pay that judgment up to and including the \$600,000 in fees paid hereunder. The parties agree that WMH shall have no obligation under this paragraph to pay anything above the \$600,000 settlement amount.

8. This Stipulation and Order re: Fees does not apply to attorneys' fees, costs and expenses incurred or accrued by Plaintiffs in connection with this action beginning on September 1, 2018, which are governed by paragraph 85 of the Stipulation and Order of Settlement.

9. Nothing contained herein shall be deemed to be an admission by the New York City Department of Education that it has in any manner or way violated either Plaintiffs' rights or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules, or regulations of the United States, the State of New York, the City of New York, or the New York City Department of Education, or any other rule, regulation, or bylaw of any department or subdivision of the City of New York or the New York City Department of Education.

10. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York or the New York City Department of Education.

11. This Stipulation and Order re: Fees shall not be admissible in, nor is it related to, any other litigation or proceeding.

12. This Stipulation and Order re: Fees contains all of the terms and conditions agreed upon by the Parties concerning the payment of attorneys' fees, costs and expenses arising in this action through August 31, 2018, and no oral agreement entered into at any time, nor any written agreement entered into prior to the execution of this Stipulation and Order re: Fees, regarding the subject matter of the instant proceeding, other than the Stipulation and Order of Settlement and the Memorandum and Order shall be deemed to exist, to bind the Parties hereto, or to vary the terms and conditions contained herein.

13. Nothing contained herein shall be deemed to be an agreement or admission by the New York City Department of Education or the City of New York as to the reasonableness of the number of hours billed or the hourly rates claimed by Plaintiffs' counsel.

14. This Stipulation and Order re: Fees is final and binding on all Parties, as well as their successors and assigns.

15. This document may be executed in subparts, and, whether or not it is executed in subparts, a signature received by facsimile or email shall have the same force and effect as an original signature.

Dated: New York, New York
November 26, 2018

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Assistant Corporation Counsel

SO ORDERED:

s/Nicholas G. Garaufis

U.S.D.J.

12/2/18